STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED February 9, 2010
v	No. 289209 Cass Circuit Court
DAVID BROOKS MITCHELL, Defendant-Appellant.	LC No. 08-010135-FH

Before: Beckering, P.J., and Markey and Borrello, JJ.

PER CURIAM.

Defendant was sentenced as a third habitual offender, MCL 769.11, to 150 months to 30 years' imprisonment for his jury trial conviction of criminal sexual conduct in the third degree, MCL 750.520d(1)(a). He appeals his sentence as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant's conviction arose out of his sexual assault of the 13-year-old victim after he and another man met the victim and another woman in a motel room. On appeal, defendant maintains that he is entitled to resentencing because the trial court failed to ask defendant whether he had an opportunity to read the presentence information report (PSIR), and thus violated MCR 6.425(E)(1)(a). We disagree.

Interpretation of a court rule is an issue of law. *ISB Sales Co v Dave's Cakes*, 258 Mich App 520, 526; 672 NW2d 181 (2003). We review questions of law de novo. *People v Petit*, 466 Mich 624, 627; 648 NW2d 193 (2002).

MCR 6.425(E)(1) provides in pertinent part:

> (E) Sentencing Procedure.
>
> (1) The court must sentence the defendant within a reasonably prompt time after the plea or verdict unless the court delays sentencing as provided by law. At sentencing, the court must, on the record:
>
> (a) determine that the defendant, the defendant's lawyer, and the prosecutor have had an opportunity to read and discuss the presentence report,

> (b) give each party an opportunity to explain, or challenge the accuracy or relevancy of, any information in the presentence report, and resolve any challenges in accordance with the procedure set forth in [MCR 6.425](E)(2) . . . .

Despite the trial court's statement during the hearing on defendant's motion for resentencing that it technically erred, the prosecution correctly notes that the court rule does not specifically provide that the trial court must ask the defendant whether he read the PSIR. It only states that the trial court must, on the record, determine that the defendant and defense counsel have had an opportunity to read and discuss the PSIR.

The trial court's actions served as a determination here. At sentencing, the trial court discussed the possible maximum penalty for the conviction. It then stated:

> Since the jury returned its verdict a presentence report has been prepared and filed with the Court. Along with it is a sentencing guideline information report which calculates a sentence guideline range for Mr. Mitchell of seventy-eight to one hundred ninety-five months. Also this week I did receive from Mr. Mitchell himself a letter on his behalf with regard to his sentencing, a two-page letter, and I have reviewed that as well.
>
> Those materials have been provided to the prosecution and to the defense for their review. I would like to determine if there are any objections to these materials at this time, beginning first with the people.

The trial court then provided an opportunity for defendant or defense counsel to respond whether there were any objections to these materials. At that time, neither defendant nor defense counsel objected, either on the ground that the report contained inaccuracies or on the ground that they had not had a chance to read the information. This exchange, as a whole, acted as a determination that defense counsel and defendant had seen the materials, including the PSIR. In addition, the letter defendant wrote to the trial court and the statements made during sentencing by defense counsel and defendant support an inference that they had read the PSIR prior to the hearing, as defendant and counsel appeared to be well aware of the recommendation in the PSIR that defendant be sentenced toward the high end of the guidelines. Nor can defendant, a third habitual offender, claim to be a neophyte in the ways of sentencing and the information contained in PSIRs.

In support of his contention that resentencing is warranted, defendant relies on previous case law from this Court finding that, where a defendant states that he was not shown the PSIR and no other information in the record refutes his claim, he is entitled to resentencing because he was denied effective allocution due to his lack of knowledge of the sentencing recommendation. See *People v Mills*, 145 Mich App 126, 131; 377 NW2d 361 (1985). In the instant case, however, defendant was not prevented from making an effective allocution. When asked whether he had anything to say regarding his sentence, defendant gave, as noted by the trial court, a "pretty impassioned plea" to the court not to send him to prison for "half of the rest of [his] life." We find that defendant has had an adequate opportunity to allocute.

Moreover, defendant did not point to any inaccuracy in the PSIR that could or should be brought to the trial court's attention on remand during the motion below, and does not do so

now. The trial court also specifically stated that it would impose the same sentence even were it to grant defendant's motion. Defendant can show no reason to remand. Thus, even were we to determine that the trial court erred by failing to make findings on the record as required by MCR 6.425(E)(1), under the circumstances, the error did not result in prejudice to defendant. Therefore, any error was harmless. See *People v Jone*s, 270 Mich App 208, 212; 714 NW2d 362 (2006), quoting *People v Bauder*, 269 Mich App 174, 180; 712 NW2d 506 (2005) (trial error does not merit reversal unless it appears more probable than not that the error was outcome determinative).

Affirmed.

/s/ Jane M. Beckering
/s/ Jane E. Markey
/s/ Stephen L. Borrello